

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

**CIVIL NO. 1:08CV190-T-02
(1:05CR248-01-T)**

DANNY JOE BROOKS,

Petitioner,

VS.

UNITED STATES OF AMERICA,

Respondent.

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JUDGMENT

For the reasons set forth in the Memorandum and Order filed herewith,

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that the Petitioner's motion to vacate, set aside or correct judgment pursuant to § 2255 is **GRANTED IN PART**.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Petitioner's conviction is **AFFIRMED**, his sentence is hereby **VACATED**, but he shall remain in the custody of the Attorney General of the United States. The Clerk of Court shall prepare an amended judgment which contains the same terms and provisions as that of the original judgment.

IT IS FURTHER ORDERED that, with entry of the Amended Judgment in a Criminal Case, notice of appeal is deemed to be filed on behalf of the Petitioner and the appointment of appellate counsel is respectfully referred to the Fourth Circuit Court of Appeals.

IT IS FURTHER ORDERED that the Petitioner's remaining claim to hold his motion to vacate in abeyance is hereby **DISMISSED WITHOUT PREJUDICE**.

Signed: May 15, 2008

A handwritten signature in dark ink, appearing to read 'L. H. Thornburg', is written over a horizontal line.

Lacy H. Thornburg
United States District Judge

